

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUAN RENTERIA)	
Claimant)	
VS.)	
)	Docket Nos. 241,618 & 259,149
CONAGRA BEEF COMPANY)	
Respondent,)	
Self-Insured)	

ORDER

Claimant appealed the April 15, 2002 Decision entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on October 18, 2002, in Wichita, Kansas.

APPEARANCES

Terry Smith of Wichita, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Decision. Additionally, the record includes the September 24, 2001 evaluation report prepared by Dr. Philip R. Mills for Judge Fuller.

ISSUES

Docket number 241,618 was filed as a claim for injuries to claimant's low back and legs that allegedly occurred each and every workday from January 18, 1999, through February 1, 1999. Docket number 259,149 was filed as a claim for injuries to the back, neck and both legs that occurred on September 2, 1999. But the parties have now stipulated the appropriate date of accident for both of these claims is January 22, 1999. Moreover, the parties have stipulated claimant's accident arose out of and in the course of employment with respondent.

The only issue presented to Judge Fuller was the amount of functional impairment that claimant sustained due to his work-related back injury. The Judge adopted the opinions of Dr. Philip R. Mills, whom the parties had agreed would examine claimant and provide opinions to be considered by the Judge the same as if the Judge had ordered an independent medical evaluation. Based upon Dr. Mills' opinions, the Judge determined claimant had sustained a five percent whole body functional impairment. Claimant did not request a work disability (a permanent partial general disability greater than the functional impairment rating) and, therefore, the Judge found claimant was entitled to receive a five percent permanent partial general disability.

Claimant contends Judge Fuller erred. Claimant argues Dr. Mills' evaluation was incomplete and based upon flawed information. Accordingly, claimant argues the 10 percent whole body functional impairment rating provided by Dr. Pedro A. Murati is more credible than Dr. Mills' five percent rating. Claimant also contends that he sustained a herniated disc between the fourth and fifth lumbar intervertebral levels for which he has not received appropriate medical treatment. Claimant requests the Board to increase his permanent partial general disability to 10 percent.

Conversely, respondent argues Dr. Mills' five percent functional impairment rating is in line with the ratings provided by Dr. C. Reiff Brown and Dr. William A. Dodson, both of whom treated claimant. Respondent argues the overwhelming weight of the medical evidence supports the Judge's findings and, therefore, the Decision should be affirmed.

The only issue before the Board on this appeal is the extent of functional impairment that claimant sustained due to the January 22, 1999 accident at work.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The parties stipulated that claimant injured his low back while working for respondent. Moreover, the parties stipulated that the appropriate date of accident for both of these claims is January 22, 1999.
2. At the request of one of claimant's attorneys, Dr. Pedro A. Murati examined claimant in April 1999. At that time, the doctor diagnosed a bulging disc between the fourth (L4) and fifth (L5) lumbar intervertebral levels, right L5 radiculopathy, lumbosacral strain and right sacroiliac joint inflammation. The doctor gave claimant temporary work restrictions and recommended a series of lumbar epidural steroid injections and physical therapy, including ultrasound, massage, heat and a TENS unit evaluation.

3. In November 2001, Dr. Murati saw claimant for a second time. After examining claimant and reviewing medical records prepared by other doctors, Dr. Murati determined claimant should undergo a discogram, which a Dr. Sekhvat had also earlier recommended. Dr. Murati concluded claimant has a herniated disc in his low back. Because of radicular symptoms into the right leg, Dr. Murati rated claimant as falling into the DRE Lumbosacral Category III for a 10 percent whole body functional impairment using the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.) (AMA Guides).

4. Claimant has seen various doctors for his low back injury. A summary of those visits is contained in the history provided by Dr. Murati at his deposition.

Patient presents today for an impairment rating. The patient states that after seeing myself, he was referred to Dr. C. Reiff Brown in 5-99 and had a series of two lumbar epidural steroid injections and he reports that these did not help. Dr. Brown then released him on 7-19-99 with a 5 percent whole person impairment and work restrictions. The patient reports that the work comp insurance sent him to Dr. Dodson on 8-25-99 and he agreed with Dr. Brown's findings.

The patient reports that he saw Dr. Sekhvat on 9-13-99 on his unauthorized medical. His diagnosis was "annular rupture and disc at L4-5" and his recommendations were, if the symptoms persisted, he should have a discogram of the lumbosacral spine and surgery should be considered.

On 7-5-00, patient saw Dr. Tisdale for a court-ordered IME and his diagnosis was "degenerative disc disease at L4-5 with radiculopathy." He felt that the patient was at MMI.

On 2-23-01, the patient's attorney, Joni Franklin, sent the patient to Dr. Piazza for an IME. His diagnosis was "annular ring disruption and disc disruption at L4-5, degenerative disease at L4-5, L5-S1 with L4-5 and L5-S1 radiculopathy." His recommendations were for a CT myelogram as soon as possible and repeat NCS/EMG studies.

The patient reports that he saw Dr. Alec Shah on 6-29-01. I do not have those records for my review. The patient states that he saw Dr. Villanueva on 10-10 and the patient states that he agreed with my report, we do not have his records for my review.

Today, on 9-24-00 [sic], the patient was referred to Dr. Mills for a court-ordered IME. His diagnosis was "chronic pain syndrome" and he states patient is at MMI. The patient states that on 10-01 he saw a Dr. Abila in Pueblo, Colorado. We do not have his records for my review.

The patient states that he [Dr. Abila] recommended anti-inflammatory medications and physical therapy. The patient reports that he has had no more testing and/or treatment since seeing me on 4-21-99, other than the two lumbar epidural steroid injections by Dr. Brown. The patient reports that he is currently not working and is not receiving any disability benefits but has applied for disability.

Patient is complaining of low back pain with tingling and numbness and burning in his bilateral legs and feet, right side greater than left.¹

5. In his September 24, 2001 evaluation report, Dr. Philip R. Mills rated claimant as having a DRE Lumbosacral Category II impairment using the *AMA Guides* (4th ed.) for a five percent whole body functional impairment. But, according to Dr. Murati, Dr. Mills' examination was deficient as Dr. Mills probably failed to test the hamstring reflex because Dr. Mills did not mention that test in his report. Accordingly, Dr. Murati believes Dr. Mills missed finding that claimant has radiculopathy.

6. Dr. Murati also commented about the five percent whole body functional impairment rating that was contained in records from Dr. C. Reiff Brown, who treated claimant for approximately two months in 1999. Dr. Murati testified that Dr. Brown's opinion may have been based upon an incomplete EMG study.

7. When considering the entire record, the Board affirms the Judge's finding that claimant has sustained a five percent whole body functional impairment. The Board is persuaded by Dr. Mills' opinions as he was selected by the parties to examine claimant and provide an unbiased report. According to Dr. Mills, claimant has diffuse complaints of pain but minimal findings on studies. Accordingly, the Board finds claimant has chronic pain syndrome and symptom magnification which comprise a five percent whole body functional impairment.

8. As claimant is not seeking a work disability, claimant's permanent partial general disability is based upon his whole body functional impairment rating.² Accordingly, claimant is entitled to receive workers compensation benefits for a five percent permanent partial general disability.

AWARD

WHEREFORE, the Board affirms the April 15, 2002 Decision entered by Judge Fuller.

¹ Murati Depo. at 13-15.

² See K.S.A. 1998 Supp. 44-510e.

IT IS SO ORDERED.

Dated this ____ day of November 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Terry Smith, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation